



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2010-0848; FRL-9350-7]

Notice of Intent to Suspend Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to section 6(f)(2) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), EPA is publishing this Notice of Intent to Suspend affecting several pesticide products. This Notice is issued by EPA pursuant to section 3(c)(2)(B) of FIFRA. The Notice of Intent to Suspend was issued following the Agency's issuance of a Data Call-In Notice (DCI), which required the registrants of the affected pesticide products to take appropriate steps to secure certain data, and following the registrant's failure to submit those data or to take other appropriate steps to secure the required data. The subject data were determined to be required to maintain in effect the existing registrations of the affected products. Failure to comply with the data requirements of a DCI is a basis for suspension of the affected registration under section 3(c)(2)(B) of FIFRA.

DATES: The Notice of Intent to Suspend included in this **Federal Register** notice will become a final and effective suspension order automatically by operation of law 30 days after the date of the registrant's receipt of the mailed Notice of Intent to Suspend or on *[insert date 30 days after the date of publication of this notice in the **Federal Register**]* if the mailed Notice of Intent to Suspend is returned to the Administrator as undeliverable, if delivery is refused, or if the Administrator otherwise is unable to accomplish delivery

to the registrant after making reasonable efforts to do so, unless during that time a timely and adequate request for a hearing is made by a person adversely affected by the Notice of Intent to Suspend or the registrant has satisfied the Administrator that the registrant has complied fully with the requirements that served as a basis for the Notice of Intent to Suspend. Unit IV explains what must be done to avoid suspension under this notice (i.e., how to request a hearing or how to comply fully with the requirements that served as a basis for the Notice of Intent to Suspend).

FOR FURTHER INFORMATION CONTACT: Jude Andreasen, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-9342; email address: *andreasen.jude@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2010-0848, is available either electronically through <http://www.regulations.gov> or in hard copy at the OPP Docket in the Environmental Protection Agency Docket Center (EPA/DC), located in EPA West, Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPP Docket is (703) 305-5805. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

II. Registrant(s) Issued Notice of Intent to Suspend, Active Ingredient, Product(s) Affected, Date(s) Issued, Reason(s) Issued, and Data Requirement(s) Involved

The Notice of Intent to Suspend was sent via the U.S. Postal Service (USPS), return receipt requested, to the registrant(s) for the product(s) listed in Table 1 of this Unit.

Table 1. —Information about Issued Notice(s) of Intent to Suspend

Registrant Affected	Active Ingredient	EPA Registration Number	Product Name	Date EPA Issued NOITS	Reason(s) Issued*	Data Requirements Involved **
Fuller System, Inc.	DDVP	1327-36	Fulex DDVP Fumigator	5/21/12	2,3	a
Fuller System, Inc.	Permethrin	1327-42	Fulex Permethrin Fumigator	5/21/12	1,2,3	a, c
Value Gardens Supply, LLC	Naphthalene Acetic Acid	5887-169	Black Leaf Vitamin B1 Solution	5/21/12	1,2,3	a, c

Foreign Domestic Chemicals Corp.	Rotenone	6458-5	Rotenone Resin for Manufacturing Use Only	5/21/12	1,2,3	a, c
Foreign Domestic Chemicals Corp.	Rotenone	6458-6	Cube Powder	5/21/12	1,2,3	a, c
ARI	Piperonyl Butoxide	7754-51	ARI Yard & Patio Formula I	5/21/12	1,2,3	a, c
Athea Laboratories, Inc.	Prometon	10088-55	Non-selective Herbicide #3	5/21/12	1,2,3	a, c
Athea Laboratories, Inc.	Prometon	10088-83	Prometon 12.5% Herbicide Concentrate	5/21/12	1,2,3	a, c
Amrep, Inc.	Prometon	10807-146	Weed-a-cide Concentrate	5/21/12	1,2,3	a, c
Amrep, Inc.	Prometon	10807-206	Misty Weed-a-cide CF	5/21/12	1,2,3	a, c
Brazos Associates, Agent for BioDerm Lab.	Pyrethrins	15297-1	Bio-Groom Flea & Tick Shampoo for Dogs & Cats	5/21/12	1,2,3	a, b, c
Brazos Associates, Agent for BioDerm Lab.	Pyrethrins	15297-7	Bio-Groom Flea & Tick – 14 Residual Spray with Lanolin Shampoo	5/21/12	1,2,3	a, b, c
Brazos Associates, Agent for BioDerm Lab.	Permethrin	15297-9	Bio-Groom Lasting Residual Action Repel-35 Insect Control Spray	5/21/12	2,3	a, c
Brazos Associates, Agent for BioDerm Lab.	Pyrethrins	15297-14	Bio-Groom Flea & Tick Pyrethrin Dip Conc. For Dogs & Cats	5/21/12	1,2,3	a, b, c
Brazos Associates, Agent for BioDerm Lab.	Pyrethrins	15297-17	Bio-Groom Flea & Tick Pyrethrin Spray	5/21/12	1,2,3	a, b, c

Brazos Associates, Agent for BioDerm Lab.	Pyrethrins	15297-19	Bio-Groom Ear Mite Treatment	5/21/12	1,2,3	a, b, c
Drexel Chemical Company	Rotenone	19713-316	Drexel 7.4% Rotenone Wettable Powder	5/21/12	3	a, c
Drexel Chemical Company	DDVP	19713-356	Best 4 Servis Brand DDVP 10 Pound Oil Solution	5/21/12	2,3	a, c
Drexel Chemical Company	DDVP	19713-357	Best 4 Servis Brand DDVP Emulsifiable Spray	5/21/12	3	a, c
Adams Technology Systems. Agent for Cardinal Laboratories, Inc.	Pyrethrins	29909-1	Rid Flea and Tick Shampoo Concentration for Dogs and Cats	5/21/12	2,3	a, b, c
Adams Technology Systems. Agent for Cardinal Laboratories, Inc.	Pyrethrins	29909-2	Cardinal Flea and Tick Shampoo for Dogs and Cats	5/21/12	2,3	a, b, c
Adams Technology Systems. Agent for Cardinal Laboratories, Inc.	Pyrethrins	29909-8	Cardinal Flea & Tick Spray for Dogs, Cats & Horses	5/21/12	2,3	a, b, c
Adams Technology Systems. Agent for Cardinal Laboratories, Inc.	Pyrethrins	29909-21	Cardinal Tick Terminator Flea & Tick Shampoo for Dogs & Cat	5/21/12	2,3	a, b, c

Earth Science Products Corp.	Naphthalene Acetic Acid	43905-1	Wood's Rooting Compound	5/21/12	2,3	a, c
Premium Environmental Products, LLC	Permethrin	71280-6	Migratol BP-1	5/21/12	1,2,3	a, c
Premium Environmental Products, LLC	Permethrin	71280-7	Migratol BPX-002	5/21/12	1,2,3	a, c
Neogen Corporation	Piperonyl Butoxide	72726-1	Poridon Equine Insecticidal Pour-On	5/21/12	2,3	a, c

*Reason(s) Issued: (1) failure to submit 90-day response; (2) failure to submit 8-month response; and (3) failure to submit any (or adequate) required data.

**Data Requirements Involved: (a) product chemistry; (b) product performance; (c) toxicology.

III. Basis for Issuance of Notice of Intent to Suspend

The affected registrant(s) failed to submit the required data or information or to take other appropriate steps to secure the required data. The subject data requirements for each affected product are summarized in Table 1 and are also specifically identified in EPA-HQ-OPP-2010-0848 in a document entitled *Appendix II – Requirement List*. Also included in the docket is *Appendix III – Explanatory Appendix*, which provides more detailed information about the reason(s) the Notice of Intent to Suspend was issued and pertinent background information and history. Each Notice of Intent to Suspend that was mailed to the affected registrant(s) included all of the referenced appendices that are pertinent to the particular Notice of Intent to Suspend. Instructions on accessing the docket are in Unit I.B.

IV. How to Avoid Suspension under this Notice?

1. You may avoid suspension under this notice if you or another person adversely affected by this notice properly request a hearing within 30 days of your receipt of the

Notice of Intent to Suspend by mail or, if you did not receive the notice that was sent to you via USPS first class mail return receipt requested, then within 30 days from the date of publication of this notice in the **Federal Register** (see **DATES**). If you request a hearing, it will be conducted in accordance with the requirements of section 6(d) of FIFRA and the Agency's procedural regulations in 40 CFR part 164. Section 3(c)(2)(B) of FIFRA, however, provides that the only allowable issues which may be addressed at the hearing are whether you have failed to take the actions which are the bases of this notice and whether the Agency's decision regarding the disposition of existing stocks is consistent with FIFRA. Therefore, no substantive allegation or legal argument concerning other issues, including but not limited to the Agency's original decision to require the submission of data or other information, the need for or utility of any of the required data or other information or deadlines imposed, any allegations of errors or unfairness in any proceedings before an arbitrator, and the risks and benefits associated with continued registration of the affected product, may be considered in the proceeding. The Administrative Law Judge shall by order dismiss any objections which have no bearing on the allowable issues which may be considered in the proceeding. Section 3(c)(2)(B)(iv) of FIFRA provides that any hearing must be held and a determination issued within 75 days after receipt of a hearing request. This 75-day period may not be extended unless all parties in the proceeding stipulate to such an extension. If a hearing is properly requested, the Agency will issue a final order at the conclusion of the hearing governing the suspension of your product. A request for a hearing pursuant to this notice must:

- Include specific objections which pertain to the allowable issues which may be heard at the hearing.

- Identify the registrations for which a hearing is requested.
- Set forth all necessary supporting facts pertaining to any of the objections which you have identified in your request for a hearing.

If a hearing is requested by any person other than the registrant, that person must also state specifically why he/she asserts that he/she would be adversely affected by the suspension action described in this notice. Three copies of the request must be submitted to: Hearing Clerk, 1900, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. An additional copy should be sent to the person who signed this notice. The request must be received by the Hearing Clerk by the applicable 30th day deadline as measured from your receipt of the Notice of Intent to Suspend by mail or publication of this notice, as set forth in the **DATES** section and in Unit IV.1., in order to be legally effective. The 30-day time limit is established by FIFRA and cannot be extended for any reason. Failure to meet the 30-day time limit will result in automatic suspension of your registration by operation of law and, under such circumstances, the suspension of the registration for your affected product will be final and effective at the close of business on the applicable 30th day deadline as measured from your receipt of the Notice of Intent to Suspend by mail or publication of this notice in the **Federal Register**, as set forth in the **DATES** section and in Unit IV.1., and will not be subject to further administrative review. The Agency's rules of practice at 40 CFR 164.7 forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who

has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives.

Accordingly, the following EPA offices, and the staffs thereof, are designated as judicial staff to perform the judicial function of EPA in any administrative hearings on this Notice of Intent to Suspend: The Office of the Administrative Law Judges, the Office of the Environmental Appeals Board, the Administrator, the Deputy Administrator, and the members of the staff in the immediate offices of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff shall have any *ex parte* communication with trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

2. You may also avoid suspension if, within the applicable 30 day deadline period as measured from your receipt of the Notice of Intent to Suspend by mail or publication of this notice in the **Federal Register**, as set forth in the **DATES** section and in Unit IV.1., the Agency determines that you have taken appropriate steps to comply with the FIFRA section 3(c)(2)(B) Data Call-In notice. In order to avoid suspension under this option, you must satisfactorily comply with Appendix II, which can be found in the Docket, for each product by submitting all required supporting data/information described in Appendix II and in the Explanatory Appendix (Appendix III) (both may be found in the Docket for this **Federal Register** notice and both are summarized in Table 1 of Unit II) to the following address (preferably by certified mail): Office of Pesticide Programs, Pesticide Re-evaluation Division, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. For you to avoid automatic

suspension under this notice, the Agency must also determine within the applicable 30-day deadline period that you have satisfied the requirements that are the bases of this notice and so notify you in writing. You should submit the necessary data/information as quickly as possible for there to be any chance the Agency will be able to make the necessary determination in time to avoid suspension of your product. The suspension of the registration of your company's product pursuant to this notice will be rescinded when the Agency determines you have complied fully with the requirements which were the bases of this notice. Such compliance may only be achieved by submission of the data/information described in Appendix II, which may be found in the Docket and which is summarized in Table 1 of Unit II.

V. Status of Products that Become Suspended

Your product will remain suspended until the Agency determines you are in compliance with the requirements which are the bases of this notice and so informs you in writing.

After the suspension becomes final and effective, the registrant subject to this notice, including all supplemental registrants of the product listed in Table 1 of Unit II., may not legally distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product listed in Table 1 of Unit II. Persons other than the registrant subject to this Notice, as defined in the preceding sentence, may continue to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product listed in Table 1 of Unit II.

Nothing in this Notice authorizes any person to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product listed in Table 1 of Unit II. in any manner which would have been unlawful prior to the suspension.

If the registration for your product listed in Table 1 of Unit II. is currently suspended as a result of failure to comply with another FIFRA section 3(c)(2)(B) Data Call-In Notice or section 4 Data Requirements notice, this notice, when it becomes a final and effective order of suspension, will be in addition to any existing suspension, i.e., all requirements which are the bases of the suspension must be satisfied before the registration will be reinstated.

It is the responsibility of the basic registrant to notify all supplementary registered distributors of a basic registered product that this suspension action also applies to their supplementary registered products. The basic registrant may be held liable for violations committed by their distributors.

Any questions about the requirements and procedures set forth in this notice or in the subject FIFRA section 3(c)(2)(B) Data Call-In Notice, should be addressed to the person listed under **FOR FURTHER INFORMATION CONTACT**.

VI. What is the Agency's Authority for Taking this Action?

The Agency's authority for taking this action is contained in sections 3(c)(2)(B) and 6(f)(2) of FIFRA, 7 U.S.C. 136 *et seq.*

List of Subjects

Environmental protection, Pesticides and pests.

Dated: May 21, 2012.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

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